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THE ATTORNEY GENERAL

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May 29, 1984

William T. Wallace, Jr., M.D.
Division of Public Health Services
Department of Health and Welfare
Hazen Drive
Concord, NH 03301

Dear Dr. Wallace:

Thomas Hettinger, Regional Coordinator of Emergency Medical Services for Northeastern New Hampshire requested an opinion from this office on the following questions:

1. When a doctor at one hospital in medical control by radio with an EMT, directs that CPR be stopped, but the body is transported to another hospital, does RSA 290:1 provide that the doctor who ordered the cessation of CPR sign the death certificate?
2. In transporting an emergency patient, must a private ambulance transport a patient to the nearest facility as their insurance carrier requires, or may the ambulance transport the patient to another facility requested by the patient?

Our response to the first question is that RSA 290:1 requires the "physician attending at the last sickness" to sign the death certificate. As the meaning of that phrase when applied to the situation which you describe is unclear, the Division should define the phrase by rule. Because the second question raises issues regarding the performance of duties by private parties rather than State officials, in an area not regulated by the Division, it is not appropriate that we offer an opinion on that question.



RSA 290:1 provides as follows:

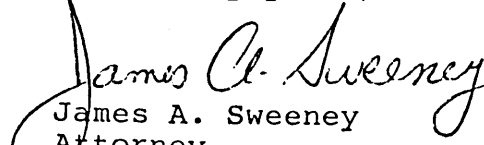
"Whenever a person shall die, the physician attending at the last sickness shall fill out and deliver to the funeral director, or to the town clerk, a certificate, duly signed, setting forth, as far as may be, the facts required by rules of the department of health and welfare, division of public health services as provided in RSA 126:2. The cause or causes of death shall be printed or typed on all certificates required to be furnished under this section."

The Division's rules do not define the "physician attending at the last sickness." The rules do, however, create two categories of physicians: The "attending" physician and the "certifying" physician. See Vit. 401.01 (c) (5) (a). These terms are not defined by the rules.

The problem in the situation which you have described appears to be that the physician giving instructions to the EMT's would direct treatment of the last sickness, but never actually see the person to certify death. The physician at the receiving hospital is able to certify death, but may not have knowledge of the circumstances of the last sickness. In order to clarify the statutory provision with reference to the circumstance described, the Division should promulgate rules defining the phrase "physician attending at the last sickness." If you need assistance in drafting the rules, please feel free to contact this office.

I trust that this has been responsive to your questions. If the Division has further questions concerning this matter, please do not hesitate to call me.

Very truly yours,


James A. Sweeney
Attorney
Division of Legal Counsel

JAS/cw
cc: Thomas Hettinger
#83-101-I